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ANN BAVENDER*
ANNE GOODWIN CRUMP*
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J. TODD METCALF*
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LEONARD R. RAISH
JAMES P. RILEY
KATHLEEN VICTORY
HOWARD M. WEISS

* NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH, P.L.C.

ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET

ROSSLYN, VIRGINIA 22209-3801

(703) 812-0400

TELECOPIER

(703) 812-0486

INTERNET

office@fth-telcomlaw.com

FRANK U. FLETCHER
(1939-1985)
ROBERT L. HEALD
(1958-1983)
PAUL D.P. SPEARMAN
(1936-1982)
FRANK ROBERSON
(1936-1961)
RUSSELL ROWELL
(1948-1977)

RETIRED
EDWARD F. KENEHAN

CONSULTANT FOR INTERNATIONAL AND
INTERGOVERNMENTAL AFFAIRS
SHELDON J. KRYSS
U. S. AMBASSADOR (ret.)

OF COUNSEL
EDWARD A. CAINE*

WRITER'S NUMBER
(703) 812-

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JUN 20 1997

Federal Communications Commission
Office of Secretary

June 20, 1997

BY HAND DELIVERY

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Rm 222
Washington, D.C. 20554

Re: WBHK(FM), Warrior, Alabama
Application for Minor Change in Facilities Per
Report and Order in MM Docket No. 94-78

Dear Mr. Caton:

On behalf of WBHK, L.L.C. (formerly H and P Radio Birmingham, L.L.C.), licensee of WBHK, Warrior, Alabama, this letter hereby respectfully requests an additional¹ ninety day extension of time, to September 24, 1997, for the filing of a minor change application for a construction permit specifying operation on Channel 254C1.

As explained in more detail in the attached March 20, 1997 extension request, on December 11, 1995, the Commission released a Report and Order (MM Docket No. 94-78, 10 FCC Rcd 13630 (1995), whereby the FM Table of Allotments was amended allotting Channel 254C1 to Warrior, Alabama. The Report and Order also modified the WBHK license to allow for the new upgraded channel. As a condition to the upgrade, the minor change application was to be submitted to the FCC 90 days after the effective date of the above-mentioned Report and Order.

The Report and Order stated the effective date would be January 25, 1996. However, a petition for reconsideration was filed on January 11, 1996, thus staying the effective date of the

¹ On March 20, 1997, the licensee of WBHK, L.L.C. filed an extension request to file the same application to June 22, 1997. The licensee of WBHK at the time of the March 20 extension request filing was North South Broadcasting Company, L.L.C. Subsequent to the request, WBHK was assigned to WBHK, L.L.C.

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Order. The petition for reconsideration was subsequently denied and a petition for review has been filed and is pending. However, during the pendency of the petition for reconsideration, the Commission amended its rules deleting the automatic stay of the effect of any amendment of the Table of FM allotments resulting from the filing of a petition for reconsideration.


While the Commission has not issued a further Order providing clarification as to the effective date for this rulemaking, it can be inferred that the Report and Order became effective on September 23, 1996, the day the automatic stay rulemaking became effective. Thus, using September 23 as the trigger date, the application would have been due on December 23, 1996. An extension request was filed to extend this date to March 24, 1997. Also, as mentioned earlier, another request was filed on March 20, 1997, for an extension to June 22, 1997.

Since the filing of the March 20 extension request, various factors have arisen necessitating an additional extension. The petition for review remains pending, of course. Further, WBHK, L.L.C., has filed a minor modification application for a C2 facility on Channel 254. Should the application be approved by the Commission, this would eliminate the need to file an application for the C1 facility as specified in the Report and Order. However, the C2 application is still pending at this time. In the event that the application for the C2 facility is denied, WBHK, L.L.C. would be interested in filing for the C1 facility as specified in the rulemaking.

Thus, WBHK, L.L.C., respectfully requests an additional ninety days to file a minor change application specifying operation on Channel 254C1 pursuant to the Commission's Report and Order.

Should there be any questions regarding this matter, kindly communicate directly with the undersigned.

Yours very truly,
FLETCHER, HEALD & HILDRETH, P.L.C.


Richard Estevez
Counsel for WBHK, L.L.C.

Enclosure

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MAR 24 1997

FLETCHER, HEALD & HILDRETH

Sidney White Rhyne

ATTORNEY AT LAW
3250 ARCADIA PLACE, N.W.
WASHINGTON, D.C. 20015-2330
202-244-6248 FAX 202-244-4279

March 20, 1997

COPY
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Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Applications for Minor Changes in Facilities
Per Report and Order in MM Docket No. 94-78
Radio Stations WBAM-FM and WBHK(FM)

Dear Mr. Caton:

The purpose of this letter is to request, on behalf of the licensees of Station WBHK(FM) in Warrior, Alabama, and Station WBAM-FM in Montgomery, Alabama, a ninety day extension of the time for filing minor change applications for construction permits specifying operation on Channels 254C1 and 255C1 respectively.

On December 11, 1995, the Commission released a Report and Order in MM Docket No. 94-78, 10 FCC Rcd 13630 (1995), in which it amended the FM Table of Allotments in §73.202(b) of the Rules to allot Channel 254C1 to Warrior and Channel 255C1 to Montgomery. The Report and Order also modified the licenses of WBHK (then known as WLBI) and WBAM-FM to specify operation on the new upgraded channels subject to certain conditions, one of which was:

"Within 90 days of the effective date of this Order, the licensees shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility."

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The Order said that its effective date was January 25, 1996. It did not, however, become effective on that date because, prior thereto on January 11, 1996, a petition for reconsideration was filed by William P. Rogers ("Rogers"). Rogers was a party adversely affected by the Order. He had filed a counterproposal in the rulemaking proceeding that was inconsistent with the allotments proposed by the licensees of WBAM-FM and WBHK, but had been rejected in the Report and Order. Under §1.420(f) of the Rules then in effect, the result of filing his petition for reconsideration was automatically to "stay the effect of [the] change in the rules pending action on the petition."

In August 1996, with Rogers' petition still pending, the Commission amended §1.420(f) of the Rules to delete the automatic stay of the effect of any amendment of the table of FM allotments resulting from the filing of a petition for reconsideration (FCC 96-301, 61 Fed. Reg. 43468). That Order deleting the automatic stay was by its terms made effective on September 23, 1996.

Though no further order has been issued in the rulemaking proceeding making clear the date by which upgrade applications must now be filed, it was possible to construe the December 1995, Report and Order as having become effective on September 23, 1996, thereby triggering as of that date the running of the ninety days within which the licensees of WBHK and WBAM-FM are required to file their minor change applications for construction permits specifying new C1 facilities. This would have required that the applications be filed not later than December 23, 1996.

Because of the continued pendency of the Rogers petition for reconsideration, construction by WBHK and WBAM-FM of their new facilities would have been at their own financial risk in the event that the Commission Order making the channel allotments should ultimately be modified.

For that reason and because the licensee of WBHK was still engaged in negotiations for a suitable new transmitter site for WBHK, and the spacing requirements of the rules made the selection of the WBHK site and filing of its application a necessary prerequisite to the filing of the WBAM-FM application, the licensees of both stations filed on December 6, 1996, a request for extension of the time for filing their minor change applications for construction permits for new C1 facilities. They requested that the period for filing be extended to and including March 24, 1997.

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On February 21, 1997, the Chief of the Policy and Rules Division of the Mass Media Bureau denied Rogers' petition for reconsideration in MM Docket No. 94-78 (DA 97-332). Public notice of that action appeared in the Federal Register on March 3, 1997 (62 Fed. Reg. 9375).

Section 1.115(d) of the Rules allows Rogers until April 2, 1997, to file an application for review by the Commission of that staff action by delegated authority. Undersigned counsel has been advised by counsel for Rogers that he has this day filed an application for review. Accordingly, construction by WBHK and WBAM-FM of their new facilities will continue to be at their own risk until final disposition of the application for review.

For that reason, and because the licensees of both stations continue to be in negotiations as to choice of the most appropriate site for the new WBHK facility, between themselves and in consultation with H and P Radio Birmingham, LLC, which has contracted to purchase WBHK in an assignment that is pending before the Commission for its consent (File No. BALH-960808GE), the licensees request that the time for filing their minor change applications for construction permits for new C1 facilities be extended, if an extension be required, for ninety days from March 24, 1997. This would extend the period for filing the applications to and including June 22, 1997.

Counsel for Rogers has advised that he will not oppose this request for extension. The policy of the Audio Services Division, Mass Media Bureau, in dealing with requests such as this has been stated as follows (see letter dated April 5, 1995, from the Division Chief to the licensee of Station WQXE(FM), Elizabethtown, KY, 1800B3-RPC):

"The Commission's staff accepts justifiable requests for extension of time to file upgrade applications, and if no objection is received, the additional time is generally afforded. Due to the Commission's limited resources, the staff does not issue letters granting such requests."

In view of this policy, unless advised of a denial of this request, the licensees of the stations will assume it has been granted. They have selected tentative C1 sites and are prepared if required to file for those sites on short notice. Accordingly, in the unforeseen event that this request for a ninety

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day extension should be denied, the licensees request that they be afforded a brief period of one week within which to file their applications for C1 construction permits.

Sincerely,

Sidney White Rhyne
Counsel for Deep South Broadcasting
Company, Licensee of WBAM-FM,
and
North South Broadcasting Company,
L.L.C., Licensee of WBHK(FM)

SWR/wp

cc: James R. Crutchfield, Esq., Supervisor
Processing Support Group
Audio Services Division
John A. Karousos, Chief
Allocations Branch
Policy and Rules Division
Lauren A. Colby, Esquire
Counsel for William P. Rogers
✓ Howard M. Weiss, Esquire
Counsel for H and P Radio Birmingham, LLC